Appendices I, II and III.

APPENDIX I.

Certain Sections of the Revised Statutes.

§4526 was §33 of the Act of June 7, 1872, as amended.
§4529 was §35 of the Act of June 7, 1872, as amended.
§4582 comes from the Act of Feb. 28, 1803, as amended.

§4526.

In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections forty-five hundred and seventy-seven, forty-five hundred and seventy-eight, and forty-five hundred and seventy-nine of the Revised Statutes of the United States. (R. S., Sec. 4526, amended, Dec. 21, 1898, c. 28, Sec. 3, 30 Stat. 755.)

§4529.

The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the

manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. (R. S., Sec. 4529, amended, Dec. 21, 1898, c. 28, Sec. 4, 30 Stat. 756, and March 4, 1915, c. 153, Sec. 3, 38 Stat. 1164.)

§4582.

Whenever a vessel of the United States is sold in a foreign country and her company discharged, it shall be the duty of the master to produce to the consular officer a certified list of the ship's company, and also the shipping articles, and besides paying to each seaman or apprentice the wages due him, he shall either provide him with adequate employment on board some other vessel bound to the port at which he was originally shipped, or to such other port as may be agreed upon by him, or furnish the means of sending him to such port, or provide him with a passage home, or deposit with the consular officer such a sum of money as is by the officer deemed sufficient to defray the expenses of his maintenance and passage home; and the consular officer shall indorse upon the agreement with the crew of the ship which the seaman or apprentice is leaving the particulars of any payment, provision, or deposit made under this section. A failure to comply with the provisions of this section shall render the owner liable to a fine of not exceeding fifty dollars. (R. S. Sec. 4582, amended, June 26, 1884, c. 121, Secs. 5, 23, Stat. 54, and Dec. 21, 1898, c. 28, Secs. 17, 30, Stat. 759.)

APPENDIX II.

THE CONGRESSIONAL HISTORY OF R. S. §4527, AND EFFECT THEREOF UNDER THE DECISIONS OF THIS COURT ON THE CONSTRUCTION OF STATUTES.

R. S. Section 4527 originally was a part of a considerable system of shipping laws which was introduced in the House of Representatives early in 1872 as H. R. No. 2044.

Of the original bill the section under discussion was the twenty-first, and, as originally introduced, it read as follows:

> "SEC. 21. That any seaman who has signed an agreement and is afterwards discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, a sum equal in amount to one month's wages as compensation, and may, on adducing such evidence as the court hearing the case deems satisfactory of having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned."

This section was not changed in any way during the passage of the Act and appears without alteration at page 266 of Volume 17 of the Statutes at Large.

The first reference which counsel have been able to find to H. R. 2044 is at page 1836* of the Congressional Globe. On March 20th, 1872, the bill was reported back to the

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* The page citations made herein are all to the Congressional Globe for the Second Session of the Forty-Second Congress.

House of Representatives by the Committee on Commerce with the recommendation that it pass. Mr. Conger of Michigan sponsored the bill. The House then considered the bill, and at page 1836 the following debate took place:

> "Mr. Potter. Before the proposition of the gentleman from Michigan (Mr. Conger) is acted on, I wish to make an inquiry. Will the gentleman from Michigan be kind enough to inform me whether this bill is in any respect or substantially like the bill on this subject which was considered by the Committee on Commerce during the Forty-First Congress?"
>
> "Mr. Conger. It is the same bill, with some merely verbal changes. * * *
>
> "This bill, in substantially its present form, was passed by the Senate during the last Congress and received the attention of the Committee on Commerce of this House, but it failed to be reported here for lack of time. It is substantially the same bill as that to which the gentleman from New York refers, there being only some verbal changes.
>
> "* * * The object of the bill, as indicated in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject. The bill is substantially the Shipping-Commissioners Act of England, with such changes as have been deemed necessary to adapt it to this country. * * *"

Nothing which was of any interest in the present question was said during the rest of the debate.

On April 4th, 1872, the House of Representatives resumed the consideration of the bill, which was read section by section. Many of the sections were debated, but Sec-

tion 21 was not touched on in the debate. Pp. 2172 and following.

On April 5th, the House of Representatives resumed and completed the consideration of the bill. The bill was read a third time and passed. Pp. 2206-2208.

On April 9th, 1872, H. R. No. 2044 was received by the Senate from the House of Representatives, page 2286, and on the same day it was read twice by title and referred to the Committee on Commerce, page 2297.

On April 24th, 1872, the following brief note as to the Senate proceedings appears at page 2716:

> "Mr. BUCKINGHAM, from the Committee on Commerce, to whom was referred the bill (H. R. No. 2044) to authorize the appointment of shipping commissioners by the several circuit courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen, reported it with amendments."

On May 14th, the Senate considered the bill as Committee of the Whole and in the course of the debate Senator Stockton, who was asking the supporters of the bill for information but who was neither opposing it nor supporting it, said, at page 3437:

> "It is fifty pages of a code of laws to govern the merchant marine. It is an alteration of the rules of the Courts of Admiralty. It is an alteration of the contracts between seamen and their employers. * * *"

Three days later, on May 17th, 1872, the bill, with the Senate Committee's amendments, passed the Senate without further debate, as appears at page 3572:

"MR. CHANDLER. Does the Senate object to the vote being taken on House bill No. 2044, to authorize the appointment of shipping commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen?"

"THE VICE PRESIDENT. If there is no objection the bill will be read the third time, and the question is on its passage."

"The bill was passed."

On May 18th, 1872, the bill with the Senate amendments was reported back to the House of Representatives, ordered printed and to lie on the table: p. 3634.

On May 23rd the House of Representatives insisted on its original measure and asked for a conference with the Senate: p. 3798.

On May 24th the Senate insisted on its amendments and asked for a conference with the House of Representatives: pp. 3807, 3825.

On May 27th the conference committees reported to the House of Representatives, p. 3886, and to the Senate, p. 3911, and the conference report was concurred in by the Senate, p. 3911, and by the House of Representatives, p. 3919.

The bill was enrolled and signed on May 29th, in the House of Representatives, p. 3983, and in the Senate, p. 4010.

On June 8th, 1872, a message was received from one of President Grant's secretaries stating that the president had signed the bill, p. 4425.

As we have pointed out, no alteration was made in Section 21, the present R. S. §4527, by either the Senate or the House of Representatives.

While ordinarily the opinions of individual members of either House of Congress are not admissible to determine the meaning of any particular provision of a statute;

> *Mitchell* v. *Great Works etc. Co.* (C. C. Maine 1843), *per* Story, J., 2 Story 648, 17 Fed. Cas. 496, 498-9; #9662;
>
> *Aldridge* v. *Williams* (1844), 3 How. 1, 24;
>
> *U. S.* v. *Union Pac. R. R. Co.* (1875), 91 U. S. 72, 79,
>
> *U. S.* v. *Trans-Missouri Freight Assn.* (1897), 166 U. S. 290, 318;
>
> *Duplex Co.* v. *Deering* (1921), 254 U. S. 443, 474;
>
> But *contra; U. S.* v. *Thind* (1923), 261 U. S. 204, 214,

an exception exists to this rule. The remarks of members in charge of the bill on the floor, or who participated in the preparation of the bill, may be used in construing its provisions:

> *Acklin* v. *People's etc. Assn.* (D. C. Ohio 1923), 293 Fed. 392, 397;
>
> *Mennen Co.* v. *Fed'l Trade Com'n* (C. C. A. 2 1923), 288 Fed. 774, 778; cert. denied 262 U. S. 759;
>
> *U. S.* v. *Coca Cola Co.* (1916), 241 U. S. 265, 281;
>
> *U. S.* v. *St. Paul etc. Co.* (1918), 247 U. S. 310, 318;
>
> *Duplex Co.* v. *Deering* (1921), 254 U. S. 443, 475.

It is apparent from the remarks of Mr. Conger of Michigan, the sponsor of the bill, made on March 20, 1872, which have been quoted above, that it was intended to alter and regulate the mode of the discharge of seamen.

As far as concerns Section 21, nowhere in the debates or in the proceedings of either House was anything said or done to contradict this statement of general intention.

The intention of Congress is plain and the language used by Congress to express its intention is apt and clear. As has been pointed out above, no alteration was made in Section 21, the present R. S. §4527, by either the Senate or the House of Representatives from the time of its introduction to the time of its passage.

We respectfully urge that under these circumstances the clearly expressed intention of Congress is binding on this Court.

APPENDIX III.

Provisions of the European Codes.

Provisions similar to those of R. S. §4527 are to be found in the codes of the principal maritime nations of Europe.

We omit any consideration of the provisions of the European codes which deal with unlawful discharge before the voyage has commenced, in the class of cases where a lump sum payment has been agreed upon for an entire particular voyage, and discuss only the provisions of the codes which deal with unlawful discharge before the voyage has commenced where the pay of the seaman is by the month.

The Court will note that Congress, following the English statute, has gone beyond the provisions of the other European legislation by extending the period within which the extra compensation accrues to the seaman to one month after the employment has commenced, even though the voyage has commenced previous to the unlawful discharge.

France: Article 252 of the *French Code of Commerce* provides as follows (italics ours):

> "If the voyage is broken up by the act of the owners, captain, or affreighters, before the departure of the ship, the seamen hired by the voyage or by the month are paid for the days employed by them in the fitting out of the ship. They retain *as indemnities* the advances received.
>
> "If the advances have not then been paid, they receive, *as indemnity*, one month of their agreed wages."

The French text of this article is as follows:

> "Art. 252. Si le voyage est rompu par le fait des propriétaires, capitaine ou affréteurs, avant le départ du navire, les matelots loués au voyage ou au mois sont payés des journées par eux employées à l'équipment du navire. Ils retiennent pour indemnités les avances reçues.
>
> "Si les avances ne sont pas encore payées, ils reçoivent, pour indemnité, un mois de leurs gages convenus."

ITALY: Article 529 of the *Italian Code of Commerce* provides as follows (italics ours):

> "If the voyage is broken up by the act of the owners, of the captain, or of the affreighters before the departure of the ship, the seamen hired by the voyage or by the month have the right to payment for the days employed by them for the fitting out of the ship and retain *as indemnity* the advances received.
>
> "If the advances have not then been paid, the seamen hired by the month receive *as indemnity* one month of the agreed salary * * *."

The Italian text of this article is as follows:

> "529. Se il viaggio è rotto per fatto dei proprietarii, del capitano o dei noleggiatori prima della partenza della nave, i marinai arruolati a viaggio od a mese hanno diritto al pagamento delle giornate da essi impiegate ad allestire la nave e ritengono per indennità le anticipazioni ricevute.
>
> "Se le anticipazioni non sono ancora state pagate, i marinai arruolati a mese ricevono per indennità una mesata del salario convenuto * * *."

BELGIUM: Article 93 of Book II, Title II, of the *Belgian Code of Commerce* provides as follows (italics ours):

> "If the voyage is broken up by the act of the owners, captain or affreighters, before the departure of the ship, the seamen hired by the voyage or by the month are paid for the days employed by them in the fitting out of the ship. They retain *as indemnity* the advances received.
>
> "If the advances have not then been paid, the seamen hired by the month receive *as indemnity* one month of their agreed wages * * *."

The French text of this article is as follows:

> "93. Si le voyage est rompu par le fait des propriétaires, capitaine ou affréteurs, avant le départ du navire, les matelots loués au voyage ou au mois sont payés des journées par eux employées à l'équipment du navire. Ils retiennent pour indemnité les avances reçues.
>
> "Si les avances ne sont pas encore payées, les matelots loués au mois reçoivent pour indemnité un mois de leurs gages convenus; * * *."

THE NETHERLANDS: Article 411 of the *Code of Commerce of the Netherlands* provides as follows (italics ours):

> "If the voyage is broken up before the departure by the act of the owner, of the captain or of the affreighter, the officers and seamen shall have the choice, either to keep, *by way of indemnity*, all that of their wages which has been advanced to them, or to demand, deduction being made of these advances, one month of their agreed wages, or one-fourth of their wages, if they were hired by the voyage.
>
> "Whichever the way by which they were hired, they keep their rights to the salary for the days

employed by them in the service after signing the muster-roll, the salary being calculated in proportion to the agreed wages."

Article 411 of the *Code of the Dutch Indies* is identical with Article 411 above.

The Dutch text of these articles is as follows:

"411. Indien de reis, door toedoen van den eigenaar, den schipper of den bevrachter, in het geheel geenen voortgang heeft, hebben de officieren en de scheepsgezellen de keuze, of, om tot schadeloosstelling te behouden al hetgeen zij op hand ontvangen hebben, of, onder aftrek daarvan, te vordeeren één maand huur of, indien zij bij de reis zijn aangenomen, een vierde van het bedongen loon.

"Op hoedanige wijze zij ook mogten gehuurd zijn, blijven zij geregtigd tot de vordering van hun loon voor die dagen, gedurende welke zij sedert de monstering in den dienst zijn geweest, berekend in evenredigheid van de bedongene huur."

Norway: Section 34 of the *Norwegian Act of February 16, 1923*, provides as follows:

"If a seaman is dismissed before the termination of the engagement, without such dismissal being warranted according to Section 32 or Section 33, he shall be entitled to two months' wages from the date of leaving, provided he is a mate or engineer, or to one month's wages, provided he belongs to the remaining crew."

This section is set forth in the decision of the court at page 413 in *The Fort Gaines*, 18 Fed. (2d) 413; 1927 A. M. C. 655.

Thus it will be seen by this Court that each of the codes which we have cited above provide, like the British and the American statutes, that the extra payment shall

be an indemnity for the damages suffered by the seamen because of the breach of contract in discharging him.

It will also be noticed that the measure of damages of the various codes is, like R. S., Section 4527, set at one month's wages, except that the European seamen, England excepted, have the privilege of retaining any advances of wages received by them instead of the lump sum of one month's wages.

The English statute is more liberal than the other European codes, because it extends the time within which the extra compensation may be received from "before the departure of the ship" to "before the commencement of the voyage, or before one month's wages are earned."

On the other hand, the English statute provides a sliding scale of damages, so that the seaman is compelled to prove the measure of his damages, which, it is provided, in any case cannot exceed one month's wages.

R. S., Section 4527, combines the liberality of the English statute with that of the Continental codes, because it does not compel the seaman to prove the measure of his damages. He need only show his wrongful discharge within the time limit of the American statute, whereupon he recovers the lump sum of one month's wages, even though, perhaps, he may have secured an equally remunerative position elsewhere the day after his discharge.

Further, by providing that the one month's wages shall be recovered "as if it were wages duly earned", Congress has permitted the seaman to collect his damages in the special and summary method by which he recovers his ordinary wages.